

APPEAL NOS. 021194 AND 021195
FILED JUNE 27, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Two contested case hearings (CCH) were held on April 18, 2002. With regard to the two disputed issues, the hearing officer decided that the respondent's (claimant) compensable injury of _____, extends to and includes cervical radiculopathy, and that the claimant's request for spinal surgery should be approved. The appellant (carrier) appealed both decisions and the claimant responded.

DECISION

The hearing officer's decisions are affirmed.

The carrier asserts that the hearing officer erred in not granting its request to consolidate the two CCHs and hear both issues at one CCH. While it may have been more expedient to consolidate the issues at one CCH, we conclude that the carrier has not shown reversible error in the hearing officer's denial of the carrier's request under the circumstances presented. We note that the CCHs were held on the same day and were heard by the same hearing officer.

The carrier contends that the hearing officer erred in determining that the compensable injury includes cervical radiculopathy. Conflicting evidence was presented on this issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's determination is supported by the claimant's testimony and by the reports and opinion of the claimant's treating doctor. We conclude that the hearing officer's determination that the compensable injury of _____, includes the cervical radiculopathy is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The carrier contends that the hearing officer erred in approving the claimant's request for spinal surgery. The request for cervical spinal surgery was made by the claimant's surgeon, who is also the claimant's treating doctor, in July 2001. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.206 (Rule 133.206) applies to this case. The carrier's second opinion doctor did not concur with the recommended surgery; however, the claimant's second opinion doctor did concur. The hearing officer determined that the great weight of the other medical evidence was not contrary to the recommendation of the surgeon and the opinion of the claimant's second opinion doctor and, therefore, approved the request for spinal surgery. See Rule 133.206(k)(4). We note that the claimant's second opinion doctor concurred with the surgeon's recommendation that the claimant undergo a cervical decompression and cervical fusion with instrumentation. We have held that a second opinion doctor does not have to agree on the number of

levels within the region in which the recommended surgery will be performed in order to constitute a concurrence under Rule 133.206(a)(13). See Texas Workers' Compensation Commission Appeal No. 012786, decided December 28, 2001, and Appeals Panel decisions cited therein. We conclude that the hearing officer's decision to approve the claimant's request for spinal surgery is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

The hearing officer's decisions and orders are affirmed.

The true corporate name of the insurance carrier is **WAUSAU BUSINESS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge